

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Cole Screenprint, Incorporated,

Plaintiff,

v.

Superior Imaging Group, Inc., a Washington
Corporation, and Fascination Graphics, Inc., a
Washington Corporation,

Defendants and
Counterclaim Plaintiff

v.

Cole Screenprint, Inc., a Washington corporation,
and Edwin Ogle and Donald G. O'Gara,
individuals, and the respective marital
communities of these individuals,

Counterclaim Defendants.

No. C06-5396 JCC

STIPULATED PROTECTIVE
ORDER

STIPULATION

Pursuant to Federal Rule of Civil Procedure 26, it appearing that discovery in the
above-entitled action will involve the disclosure of confidential information, it is hereby
stipulated by and among Cole Screenprint, Inc., Superior Imaging Group, Inc., and

1 Fascination Graphics, Inc., through their respective counsel of record, that the following
 2 Protective Order be entered to give effect to the terms and conditions set forth below.

3 **1.0 Definitions**

4 1.1 "Party" or "Parties" means Cole Screenprint, Inc., Superior Imaging
 5 Group, Inc., and Fascination Graphics, Inc., and/or any other persons or entities that
 6 subsequently file an appearance as a party in this litigation.

7 1.2 "Designating Party" means any of the Parties or any non-party
 8 producing documents or information under this Protective Order.

9 1.3 "Receiving Party" means any of the Parties who elect to receive
 10 information under this Protective Order.

11 1.4 "Protected Information" includes the following categories of
 12 information, and shall include printed or electronic documents produced prior to as
 13 well as during discovery, answers to interrogatories, responses to requests for
 14 admission, depositions, hearing or trial transcripts, and tangible things, the information
 15 contained therein and all copies, abstracts, excerpts, analyses or other writings that
 16 contain, reflect or disclose such information whether contained in attorney work
 17 product or not.

18 1.4.1 "Confidential" designates Protected Information that a
 19 Designating Party believes to be of a proprietary business or technical nature
 20 and not readily available to competitors, potential competitors, and/or other
 21 third parties. A Designating Party may so label or mark not only its own
 22 documents and things, but also documents of other Parties or non-parties in the
 23 Designating Party's possession, custody and/or control that the Designated
 24 Party is obligated (contractually or otherwise) to keep confidential.

25 1.4.2 "Confidential – Attorneys' Eyes Only" designates Protected
 26 Information that the Designating Party reasonably believes is "Confidential"
 27 information within the meaning of Section 1.4.1, the disclosure of which is

likely to cause harm to the competitive position of the Designating Party or to a non-party whose documents are designated as "Confidential – Attorneys' Eyes Only" by the Designating Party. Such information may fall into one or more of the following categories:

- 1.4.2.1 Current Business Plans
- 1.4.2.2 Future Business Plans
- 1.4.2.3 New Product Development
- 1.4.2.4 New Business Development (for old products)
- 1.4.2.5 Trade Secrets (as defined by Washington law)
- 1.4.2.6 Competitor Market Analysis
- 1.4.2.7 Customer Lists
- 1.4.2.8 Internal Financial/Accounting Information
- 1.4.2.9 Operations Information
- 1.4.2.10 License Agreements
- 1.4.2.11 Development Agreements
- 1.4.2.12 Agreements with Sales Representatives
- 1.4.2.13 Prices Charged to Customers
- 1.4.2.14 Business Relationships with Third Parties
- 1.4.2.15 Current Product Development and Production
- 1.4.2.16 Costs Related Information

1.4.3 Protected Information shall not include: information that is in the public domain at the time of disclosure (except such information in the public domain which may be treated as a trade secret due to the effort involved

1 in collecting and maintaining such information); information which after
 2 disclosure is published or becomes part of the public domain through no fault
 3 of a Party receiving information under this Protective Order, but only after it is
 4 published or comes into the public domain (subject to the same trade secret
 5 exclusion stated above); information that is in the possession of a Party
 6 receiving such information without any confidentiality obligations at the time
 7 of disclosure; information independently derived by a Party receiving
 8 Protected Information without reference to any Protected Information, as
 9 evidenced by documentation; or information disclosed by a third party having
 10 the legal right to do so.

11 1.5 "Document" shall have the meaning ascribed to it in Federal Rule of
 12 Civil Procedure Rule 34(a).

13 1.6 "Employees" means regular full or part-time employees and also
 14 temporary personnel who are providing consulting, technical, legal, secretarial,
 15 clerical and/or administrative services only to the designated employer.

16 **2.0 Designations of Protected Information**

17 2.1 Each Designating Party who produces or discloses any material that the
 18 Designating Party reasonably believes to contain or reveal Protected Information may
 19 designate the same Confidential or Confidential – Attorneys' Eyes Only.

20 2.2 The Parties must make a good-faith determination that any information
 21 designated "Confidential" or "Confidential – Attorneys' Eyes Only" warrants
 22 protection under Federal Rule of Civil Procedure 26(c). Designations of material as
 23 "Confidential" or
 24 "Confidential – Attorneys' Eyes Only" must be narrowly tailored to include only material for
 25 which there is good cause.

26 2.3 Documents may be designated as "Confidential" only if, prior to
 27 production, the document is clearly marked with a legend which states:

CONFIDENTIAL

2.4 Documents may be designated as "Confidential – Attorneys' Eyes Only" only if, prior to production, the document is clearly marked with a legend which states:

CONFIDENTIAL – ATTORNEYS' EYES ONLY

2.5 An answer to an Interrogatory or response to a Request for Admission may be designated as the appropriate category of Protected Information by a statement made therein.

2.6 A deposition transcript or a portion thereof may be designated as the appropriate category of Protected Information by so designating on the record at the deposition or designating any portion of the transcript as "Confidential" or "Confidential – Attorneys' Eyes Only" within thirty (30) calendar days following the mailing of the transcript or videotape by the court reporter or videographer to the deponent's counsel. Such notice thereof shall be made in writing to the reporter, with copies to all other counsel, designating the portions of the transcript or videotape that contain Protected Information as either "Confidential" or "Confidential – Attorneys' Eyes Only", and directing the reporter to mark that portion of the transcript or videotape accordingly. Until expiration of the thirty (30) day period specified in this Section 2.6, all deposition transcripts and/or videotapes shall be considered and treated as "Confidential – Attorneys' Eyes Only".

2.7 Counsel of record shall exert their best efforts to raise claims of confidentiality prior to the disclosure of Protected Information.

2.8 Notwithstanding the provisions of Sections 2.2 – 2.7 of this Protective Order, failure of counsel to designate and/or mark any Protected Information as "Confidential" or "Confidential – Attorneys' Eyes Only" as provided above shall not preclude the disclosing Party from thereafter in good faith making such a designation and requesting the Receiving Party to so mark and treat such Protected Information so

1 designated. After such designation, such Protected Information shall be fully subject
 2 to this Protective Order and treated thereafter according to the new or corrected
 3 designation subject to any objection procedure provided herein. The Receiving Party,
 4 however, shall incur no liability for disclosures made prior to notice of such
 5 designation. The Parties shall confer in good faith to correct the designation and shall
 6 take all necessary steps to prevent further dissemination of the subject materials.

7 **3.0 Disclosure of Protected Information**

8 3.1 Information designated "Confidential", including copies thereof,
 9 extracts therefrom, compilations and/or summaries thereof and any information
 10 therein, may only be disclosed to the following persons:

11 3.1.1 outside counsel of record for each Party and the Employees of
 12 outside counsel of record ("Outside Counsel") who are assisting in this
 13 litigation and whose duties require access to Protected Information, which shall
 14 include:

15
 16 For Plaintiff: James W. Anable, W. David Shenk, and any other
 17 attorneys of CHRISTENSEN O'CONNOR JOHNSON KINDNESS
 18 PLLC;

19
 20 For Defendants: Patrick M. Dwyer and any other attorneys of Patrick M.
 21 Dwyer PC.:

22 3.1.2 independent experts and/or consultants retained by counsel of
 23 record for each Party, subject to the provisions of Section 4.0 of this Protective
 24 Order, except that this paragraph 3.1.2 does not authorize the provision of
 25 Protected Information to: (a) any expert witness or consultant who is
 26 employed, or has been employed within the last two (2) years, by a competitor
 27

1 of the entity (either a Designating Party or a third-party whose documents are
 2 designated by a Designating Party) that is the source of the Protected
 3 Information; (b) any expert witness or consultant who regularly consults for
 4 such a competitor; or (c) any expert witness or consultant contemplating
 5 employment or a regular consulting relationship with such a competitor.

6 3.1.3 in-house attorneys for each Party, and Employees who are
 7 assisting such in-house attorneys in this litigation in filing and/or
 8 administrative duties and whose duties require access to Protected Information;

9 3.1.4 employees or representatives of each Party who are necessary to
 10 the Party's preparation and pursuit of claims and defenses in this action;

11 3.1.5 third parties specifically retained to assist outside counsel in
 12 copying or computer coding of documents, but only for purposes of copying or
 13 computer coding Protected Information;

14 3.1.6 qualified persons taking or recording testimony involving
 15 Protected Information and their Employees whose duties require access to
 16 Protected Information;

17 3.1.7 the Court and the Court's staff; and

18 3.1.8 such other persons as the Parties agree to in writing prior to any
 19 disclosure of Protected Information.

20 3.2 Information designated "Confidential – Attorneys' Eyes Only",
 21 including copies thereof, extracts therefrom, compilations and/or summaries thereof
 22 and any information therein, may only be disclosed to the following persons: persons
 23 falling within the categories specified in Sections 3.1.1, 3.1.2, 3.1.5, 3.1.6, 3.1.7, and
 24 3.1.8 of this Protective Order, but shall in no case be disclosed to persons who are
 25 involved in competitive decision making or intellectual property enforcement or
 26 licensing decisions for the Parties.
 27

1 3.3 Protected Information shall not be made available to any person except
 2 as authorized under this Protective Order, and no person identified in Sections 3.1.2
 3 and 3.1.5 shall have access to Protected Information without having first read,
 4 acknowledged and agreed in writing (in the form of the Declaration and Undertaking
 5 attached hereto as Exhibit A) to be bound by this Protective Order. A file of all such
 6 written acknowledgments shall be maintained by the Party obtaining them, and copies
 7 of such written acknowledgments shall be provided to all counsel of record upon
 8 request.

9 3.4 Each individual who receives any materials designated as
 10 "Confidential" or "Confidential – Attorneys' Eyes Only" hereby agrees to subject
 11 himself or herself to the jurisdiction of this Court for purposes of any proceedings
 12 relating to the performance under, compliance with, or violation of this Protective
 13 Order.

14 3.5 If the recipient of any Protected Information learns that, by
 15 inadvertence or otherwise, it has disclosed Protected Information to any person or in
 16 any circumstance not authorized under this Protective Order, the Receiving Party must
 17 immediately: (a) notify in writing the Designating Party of the unauthorized
 18 disclosures; (b) use its best efforts to retrieve all copies of the Protected Information;
 19 (c) inform the person or persons to whom unauthorized disclosures were made of all
 20 the terms of this Order; and (d) request such person or persons execute the Declaration
 21 and Undertaking in the form attached hereto as Exhibit A.

22 **4.0 Objections to Disclosures**

23 4.1 Not less than ten (10) business days prior to the initial disclosure of
 24 Protected Information to any person falling under the provisions of Section 3.1.2 or
 25 Section 6.6 of this Protective Order, the Party planning to make such disclosure shall
 26 first serve (by e-mail and mail) on the Designating Party (and on each opposing Party,
 27 if the Designating Party is other than one of the other Parties) the name, address,

1 present employer, title, current resume, curriculum vitae, or biography, and an
2 executed Declaration and Undertaking in the form of Exhibit A.

3 4.2 Within the ten (10) business day period before disclosure of the
4 Protected Information to the proposed recipient, the Party or non-party whose
5 Protected Information is concerned may serve (by e-mail and mail) a written objection
6 to disclosure to such person. Such an objection shall stay disclosure to the proposed
7 recipient. Failure to serve a written notice of objection within ten (10) business days
8 shall be deemed approval of disclosure to a proposed recipient.

9 4.3 If a written objection is served pursuant to Section 4.2, the Parties shall
10 attempt to resolve the objection by meeting and conferring within ten (10) business
11 days of service of the written objection. If the objection is not resolved by meeting
12 and conferring, the Party seeking to prevent disclosure shall file a motion, to be heard
13 on the earliest date available. Failure to file such a motion within ten (10) business
14 days of meeting and conferring or at the conclusion of the ten-day period to meet and
15 confer shall preclude a Party from objecting to the disclosure of Protected Information
16 to the person about whom the objection is raised. The disclosure of Protected
17 Information to such proposed person shall be withheld pending the ruling of the Court
18 on any such motion. On any such motion, the Party seeking to prevent disclosure to a
19 person proposed for approval shall have the burden of proof.

20 4.4 If at any time during the pendency or trial of this action, counsel for
21 any Party claims that a Designating Party is unreasonably designating certain
22 information as "Confidential" or "Confidential – Attorneys' Eyes Only", the objecting
23 Party may serve a captioned notice of objection on the Designating Party and all
24 Parties, identifying with particularity the items to which the designation is challenged,
25 stating the basis for each challenge, and proposing a new designation for each item. If
26 the Designating Party does not re-designate the material within ten (10) business days
27 after service of such notice, the objecting Party may file and serve a motion for an

1 order that the material be re-designated. On any such motion, the Designating Party
2 seeking to prevent re-designation shall have the burden of proof. The original
3 designation shall remain effective until three (3) business days after an Order is
4 entered re-designating the materials.

5 **5.0 Use of Protected Information**

6 5.1 Protected Information disclosed pursuant to this Protective Order shall,
7 unless otherwise ordered by this Court, be used by a recipient thereof solely for the
8 purpose of this action and not for any other action or for any business or competitive
9 purposes or for any other reason. Protected Information shall not be used for any
10 purposes other than in the prosecution or defense of claims asserted in this action. In
11 no event shall any person receiving Protected Information use it for commercial or
12 competitive purposes or make any public disclosure of the contents thereof. Nothing
13 contained in this Protective Order, however, shall affect the right of the Designating
14 Party to disclose information designated solely by it under this Protective Order.

15 5.2 No person shall disclose to anyone not specified in Section 3.0 of this
16 Protective Order any Protected Information without prior written consent of the
17 Designating Party or further Order of this Court.

18 **6.0 Depositions Involving Protected Information**

19 6.1 At any deposition session, when counsel of record for a Designating
20 Party deems that a question and/or the answer to a question will result in the disclosure
21 of Protected Information, counsel may designate as "Confidential" or "Confidential –
22 Attorneys' Eyes Only" the portion of the transcript or videotape containing such
23 question or answer.

24 6.2 Any portion of a transcript designated as "Confidential" or
25 "Confidential – Attorneys' Eyes Only" Protected Information shall be transcribed
26 separately from the remainder of the transcript of the deposition and designated in the
27 manner set forth in Section 2.0 of this Protective Order.

1 6.3 During the portion of a deposition in which Protected Information will
2 be disclosed, counsel of record for the Designating Party may request that all persons
3 other than the individuals specified in Section 3.1 (for "Confidential" Protected
4 Information) or Section 3.2 (for "Confidential – Attorneys' Eyes Only" Protected
5 Information) leave the deposition room prior to disclosure of Protected Information.
6 The failure of such other persons to comply with a request of this type shall constitute
7 substantial justification for counsel of record to advise the witness not to answer the
8 question.

9 6.4 Where appropriate, in light of the amount of Protected Information
10 likely to be disclosed at a given deposition, counsel of record for the Parties may agree
11 at the beginning of or during the deposition that the entire transcript and/or videotape
12 shall be designated "Confidential" or "Confidential – Attorneys' Eyes Only", subject to
13 review of the transcript and withdrawal of any unnecessary "Confidential" or
14 "Confidential – Attorneys' Eyes Only" designation by the Designating Party within
15 thirty (30) days of receipt of the transcript. Section 6.4 is made expressly subject to
16 the provisions set forth in Section 4.4.

17 6.5 A person not otherwise permitted to receive a disclosure of Protected
18 Information under Sections 3.1 and 3.2 of this Protective Order may be shown such
19 Protected Information, and may be examined or deposed about such Protected
20 Information, if the Protected Information itself reveals that such person legitimately
21 had access to that Protected Information at some earlier time. This exception does not
22 permit any person who has received a disclosure of Protected Information to have
23 access to any other Protected Information, even if that information is similar or of the
24 same type.

25 6.6 A deponent or examined witness not otherwise permitted to receive a
26 disclosure of Protected Information under Sections 3.1 and 3.2 of this Protective Order
27 may be shown such Protected Information at a duly noticed deposition, and may be

1 examined or deposed about such Protected Information, provided that: (a) the
 2 procedures set out in Section 4.1 have been followed, and either no objection pursuant
 3 to Section 4.2 has been made, or any such objections have been resolved pursuant to
 4 Section 4.3; or (b) the witness first signs the Declaration and Undertaking in the form
 5 attached hereto as Exhibit A at the deposition. If any Party or Designating Party
 6 objects at the deposition to the disclosure of Protected Information to a deponent at
 7 deposition, then that objection to showing Protected Information to the deponent shall
 8 be resolved before any Protected Information is shown to the deponent. In the event
 9 such an objection cannot be resolved during the deposition, then the objecting Party or
 10 Designating Party (the party who raised the objection and caused the deponent to not
 11 be questioned regarding Protected Information) shall be required to pay all costs other
 12 than attorneys' fees incurred by the witness, the other Party, and/or the Designating
 13 Party if it is necessary to reconvene the deposition to conclude questioning about the
 14 Protected Information.

15 **7.0 Court Filings Including Protected Information**

16 7.1 Any written material constituting, containing or disclosing Protected
 17 Information that is lodged or filed with the Clerk of the Court, including Court papers:
 18 shall be submitted by lodging such material with a request for filing under seal and a
 19 proposed sealing order; shall be marked "FILED UNDER SEAL"; and shall be
 20 endorsed on the front page of the written material itself with a statement substantially
 21 in the following form:

22 CONFIDENTIAL
 23 SUBJECT TO PROTECTIVE ORDER
 24 IN CIVIL ACTION NO. C 06-1002 RSL
 25 UNITED STATES DISTRICT COURT FOR THE
 26 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

27 or

CONFIDENTIAL – ATTORNEYS' EYES ONLY
 SUBJECT TO PROTECTIVE ORDER
 IN CIVIL ACTION NO. C 06-1002 RSL

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

7.2 Each request to file Protected Information under seal shall require an individualized sealing order, which shall be accompanied by the document(s) to be filed under seal. The request shall be narrowly tailored to cover only those portions of the materials for which good cause to seal exists, while all other portions of such materials shall be filed in the public file and shall indicate where information has been redacted. All documents to be filed under seal shall be submitted to chambers in both redacted and unredacted form so that chambers staff does not have to re-assemble the whole brief or declaration.

7.3 All materials accepted by the Court for filing under seal shall be maintained by the Clerk of the Court separate from the public records in this action and shall be released only upon further Order of the Court.

7.4 All documents, exhibits or papers filed in connection with any proceedings related to compliance with, performance under, construction of or violation of this Protective Order shall be filed under seal.

8.0 Pretrial, Trial, and Appeal

8.1 This Protective Order is intended to regulate the handling of Protected Information during the pretrial period of this litigation, but shall remain in force and effect thereafter until modified, superseded or terminated on the record by agreement of the Parties hereto, by Order of this Court, or by Order of an Appellate Court.

8.2 Subject to the Federal Rules of Evidence, Protected Information may be offered in evidence at trial or any Court hearing in this action, provided that:

8.2.1 the proponent of the evidence advises the Court and the Designating Party that Protected Information will be offered prior to its offer and the Designating Party has appropriate opportunity to object to the disclosure of the Protected Information;

1 8.2.2 any documents, exhibits or papers containing Protected
2 Information shall be filed under seal;

3 8.2.3 the evidence be received *in camera* or under other conditions to
4 prevent disclosure to any persons other than the judge, the jury, the court
5 reporter, counsel of record, any witness testifying with respect to the evidence,
6 and other persons who are entitled to receive the appropriate category of
7 Protected Information under the terms of this Protective Order, and

8 8.2.4 the trial or Court hearing transcript is treated in the manner
9 specified in Section 6.0 of this Protective Order.

10 8.3 Notwithstanding the foregoing provisions, any Protected Information
11 used openly in court hearings or trial will not be treated in any special manner absent a
12 further Order of the Court.

13 **9.0 General Provisions**

14 9.1 Upon final termination of this action with respect to any Party, that
15 Party shall, at the option of the Designating Party, either return to the Designating
16 Party or destroy all Protected Information in its possession, except such pretrial and
17 trial records as are regularly maintained by outside counsel in the ordinary course of
18 business, which records must be protected in conformity with this Protective Order.
19 The termination of proceedings in this action shall not thereafter relieve the Parties
20 from the obligation to maintain the confidentiality of all Protected Information
21 received pursuant to this Protective Order. The Court shall retain jurisdiction over
22 disputes arising under this Protective Order after final termination of the action,
23 including all appeals.

24 9.2 This Protective Order is intended to provide a mechanism for the
25 handling of Protected Information, the disclosure or production of which is objected to
26 only on the basis of confidentiality. Each Party reserves the right to object to any
27 disclosure of information or production of any document it deems Protected

1 Information on any other ground it may deem appropriate. The designation of
2 Protected Information pursuant to this Protective Order shall not create any
3 presumption with respect to the confidential, proprietary, or trade secret nature of any
4 information, documents or things.

5 9.3 The Parties may, by joint stipulation, apply to amend this Protective
6 Order. The amendment shall take effect once the stipulation is approved and entered
7 by the Court.

8 9.4 The Court retains jurisdiction to amend this Protective Order without
9 agreement of the Parties and to issue Orders concerning Protected Information
10 disclosed under this Protective Order.

11 9.5 Notwithstanding the foregoing provisions, counsel for either Party may,
12 without disclosing its/their contents, give advice and opinions to his or her client based
13 on his or her evaluation of Protected Information provided by a Disclosing Party or a
14 third party and designated as "Confidential" or "Confidential – Attorneys' Eyes Only",
15 including for purposes of settlement discussions.

16 9.6 Nothing in this Protective Order shall limit or restrict the manner in
17 which the Parties shall handle their own Protected Information.

18 9.7 Adherence to this Protective Order in no way constitutes an admission
19 by any Party that any information provided in this action and not subject to this
20 Protective Order is not proprietary or confidential.

21 9.8 This Protective Order shall not abrogate or diminish any contractual,
22 statutory or other legal obligation or right of any Party or person, nor obligate any
23 Party or person to provide any discovery to which it asserts objections.

24 9.9 Nothing in the foregoing provisions of this Protective Order shall be
25 deemed to preclude any Party from seeking and obtaining, on an appropriate showing,
26 such additional protection with respect to the confidentiality of these proceedings or
27

1 specific documents or testimony as that Party may deem appropriate, including but not
2 limited to restrictions on public disclosure or disclosure to competitors.

3 9.10 The terms of this Protective Order shall apply to documents or
4 information produced or disclosed by third parties in connection with this action if
5 such third party wishes to designate the document or information Protected
6 Information.

7 9.11 Each Party reserves the right to apply to the Court to modify the terms
8 of this Protective Order in the event that the Party believes that it is necessary. In the
9 event such an application is made, all persons described herein shall be bound by this
10 Protective Order until it is modified by the Court.

11 9.12 The disclosure of Protected Information to any attorney of record shall
12 not prevent or disqualify that attorney of record from representing any Party or any
13 non-party in any future litigation.

14 9.13 If any Party or non-party, having received Protected Information,
15 receives a subpoena or other compulsory process from any other person or entity
16 seeking the production of the Protected Information produced by the Designating
17 Party, counsel for the Designating Party shall be notified in writing immediately, and
18 in no event more than three (3) court days after the receipt of the subpoena or other
19 compulsory process, and such notification shall include copies of the subpoena or
20 compulsory process. Absent the consent of the Designating Party, the Party or person
21 receiving such subpoena or compulsory process shall refrain to the fullest extent
22 permissible under law from producing the subpoenaed Protected Information. The
23 Party or person receiving such subpoena or compulsory process also must immediately
24 inform in writing the party who caused the subpoena or Order to issue in the other
25 litigation that some or all the material covered by the subpoena or Order is the subject
26 of this Protective Order. In addition, the Receiving Party must deliver a copy of this
27 Protective Order promptly to the Party in the other action that caused the subpoena or

1 Order to issue. The purpose of imposing these duties is to alert the interested Parties
 2 to the existence of this Protective Order and to afford the Designating Party in this
 3 action an opportunity to try to protect its confidentiality interests in the court from
 4 which the subpoena or Order issued. The Designating Party shall bear the full burden
 5 and all expenses of seeking protection in that court of its Protected Information, and
 6 nothing in these provisions should be construed as authorizing or encouraging a Party
 7 to this action to disobey a lawful directive from another court.

8 **10.0 Inadvertent Disclosure**

9 With respect to documents, things or other discovery material produced by a Party as
 10 to which the Party inadvertently failed at the time of production to assert a claim of attorney-
 11 client privilege or work-product immunity, such production shall not be a waiver of that
 12 privilege or immunity claim. Assertion of the privilege or claim of immunity shall be made as
 13 soon as practicable after learning of the inadvertent disclosure and in no event later than the
 14 date of the final pretrial conference. Upon request of the Producing Party, a Receiving Party
 15 shall return such discovery material and all copies thereof to the Producing Party provided
 16 that the cost, if any, for excising such discovery material from the paper or electronic files of
 17 the Receiving Party shall be borne by the Producing Party. A Party may, by motion, after
 18 returning the material and conferring with opposing counsel in an effort in good faith to
 19 resolve by agreement any dispute regarding the Producing Party's assertion of attorney-client

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1 privilege or work-product immunity, contest the Producing Party's claim of privilege or work-
2 product. The determination of those claims will be made by the Court without regard to the
3 fact that such discovery material has been produced.

4
5 Dated: November 15, 2006

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

6
7 /s/ W. David Shenk

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12
13 Dated: November 15, 2006

PATRICK M. DWYER PC

14 /s/ Patrick M. Dwyer

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Group, Inc. and Fascination Graphics, Inc.

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20 **ORDER**

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 Date: November 27, 2006

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The Honorable John C. Coughenour
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

COLE SCREENPRINT, INC., a Washington
corporation,

Plaintiff,

v.

SUPERIOR IMAGING GROUP, INC., a
Washington corporation; and FASCINATION
GRAPHICS, INC., a Washington corporation,

Defendants.

No. C-06-5396 JCC

DECLARATION AND
UNDERTAKING OF

I, _____, being duly sworn, state that:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. I have received a copy of the Stipulated Protective Order entered in the
above-captioned action signed by the Honorable John C. Coughenour on _____,
2006.

5. I have carefully read and understand the provisions of the Stipulated Protective
Order.

6. I will comply with and agree to be bound by all of the provisions of the
Stipulated Protective Order.

7. I will hold in confidence, will not disclose to anyone not qualified under the

1 Stipulated Protective Order, and will use only for purposes of the above-captioned action, any
2 "Confidential" and/or "Confidential – Attorneys' Eyes Only" information which is disclosed
3 to me.

4 8. I will return all "Confidential" and "Confidential – Attorneys' Eyes Only"
5 information which comes into my possession, and documents or things which I have prepared
6 relating thereto, to counsel for the Party by whom I am retained.

7 9. I understand and acknowledge that violation of this Undertaking or the
8 Stipulated Protective Order may be punishable by Contempt of Court. I hereby submit to the
9 jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in
10 the above-captioned action, but I do not submit to the jurisdiction of this Court for any other
11 purpose.

12 I declare under penalty of perjury under the laws of the United States of America that
13 the foregoing is true and correct.

14 Executed this _____ day of _____, 200__ in _____.

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